Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND MNDC FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "*Act*").

The Landlord's Application for Dispute Resolution was made on August 18, 2018 (the "Landlord's Application"). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for damage caused by the Tenants, their pets or guests to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord be permitted to retain the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants' Application for Dispute Resolution was made on August 29, 2018 (the "Tenants' Application"). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing at the appointed date and time, and provided affirmed testimony.

At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. The parties were in attendance and expressed a desire to proceed with the applications. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to a monetary order for damage caused by the Tenants, their pets or guests to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order that the Landlord be permitted to retain the security deposit or pet damage deposit?
4. Are the Tenants entitled to an order granting the return of all or part of the security deposit or pet damage deposit?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on May 15, 2017. The parties agreed the tenancy ended on August 1, 2018. During the tenancy, rent in the amount of $3,000.00 per month was due on the first day of each month. The Tenants paid a security deposit of $1,500.00 and a pet damage deposit of $1,500.00, which the Landlord holds.

The Landlord's Claim

The Landlord's claim was set out in a Monetary Order Worksheet, dated August 20, 2018. First, the Landlord claimed $1,800.00 to paint two bedrooms and an office in the rental unit. She testified the rental unit was painted before the Tenants moved in. In support, the Landlord submitted 8 photographic images depicting holes in the walls and paint peeled from the walls. In addition, the Landlord submitted an invoice, dated August 14, 2018, for $1,800.00. The Landlord testified this amount was paid. Also submitted in support was a move-in condition inspection report, signed by S.D. on May 12, 2017. The report does not refer to any wall damage other than scuff marks.

In addition, S.C. provided oral testimony for the Landlord. He testified that he is a contractor with 38 years of experience. He agreed the repair and painting work required professional attention. Further, he testified that he prepared the walls for painting to keep the Landlord's cost down.

In reply, the Tenants testified that they were prepared to repair damage and paint the walls. However, they testified that on or about July 26, 2018, the Landlord attended the rental unit, saw the Tenants were going to repair and paint the walls, and advised them not to do so as she believed the walls needed to be repaired an painted by professionals. During the hearing, the Landlord acknowledged she told the Tenants not to do the repairs because she knew the Tenants would not be able to do the work adequately.

Second, the Landlord claimed $220.00 for topsoil and grass seed. The Landlord testified there was a verbal agreement that the Tenants would maintain the yard but that they did not do so. Although no photographic images were submitted in support, the Landlord testified the grass area was muddy and covered in dog feces. In support, the Landlord submitted an invoice dated August 10, 2018, for the amount claimed.

In reply, the Tenants testified that that had cut grass, trimmed hedges, and re-seeded grass at their own expense during the tenancy, and had spent several hundred dollars doing this work. However, they suggested the weather conditions made it difficult to maintain grass on the yard year-round. Further, they testified that the Landlord attended the rental unit on or about June 14, 2018, and advised she would make arrangements to repair the lawn. The Tenants believed the Landlord was assuming responsibility to maintain the lawn at that time. The Landlord disagreed and suggested the responsibility to make alternate arrangements rested with the Tenants.

Third, the Landlord claimed $135.33 for the rental of a wheel barrow and pressure washing equipment. She testified this equipment was needed to clean the front porch, the back stairway, and the garage. The Landlord testified the main issue with these areas was the odour of dog urine, but also suggested sawdust and dog hair in the garage needed to be cleaned. In support, the Landlord submitted a receipt, dated August 10, 2018, for the amount claimed.

In reply, the Tenants acknowledged there might have been some sawdust and dog hair remaining, but only a minimal amount. The Tenants also acknowledged there was some moss to be removed but suggested this was due to the impact of the elements, and was akin to normal wear and tear.

Fourth, the Landlord claimed $189.00 to clean carpeting in the rental unit, including the stairwell. The Landlord testified the carpets were dirty and that she knew what it would take to clean them properly. The Landlord also testified she has her own carpet cleaner but did not use it because it was “obvious” that a more thorough cleaning would be required. Although the Landlord did not submit photographic images in support, she did provide an invoice, dated August 22, 2018, for $180.00.

In reply, the Tenants testified that the carpets were professionally cleaned at the end of the tenancy. They noted that the Landlord was in attendance and saw that the carpets were being professionally cleaned, commented that the cleaners appeared to be doing a good job, and asked the tenants for the contact information of the company they hired. The Landlord did not dispute this aspect of the Tenants’ evidence.

Fifth, the Landlord claimed $400.00 for labour related to the top soil and grass seed, and the pressure washing of various parts of the rental property. An undated invoice was submitted in support.

Finally, the Landlord claimed $100.00 in recovery of the filing fee paid to make the Landlord’s Application.

The Tenants' Claim

The Tenants sought the return of the security deposit and pet damage deposit held by the Landlord, which total $3,000.00. The Tenants testified their forwarding address was provided to the Landlord via email on August 2, 2018. The Landlord responded the following day, acknowledging receipt. A copy of the email exchange was submitted into evidence by the Tenants. As noted above, the Landlord's Application was made on August 18, 2018.

Finally, the Tenants claimed $100.00 in recovery of the filing fee paid to make the Tenants' Application.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act.* An applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the parties to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the parties did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

With respect to the Landlord's claim for $1,800.00 for painting, I find there is insufficient evidence before me to conclude the Landlord is entitled to the relief sought. Although the photographic evidence clearly depicts damage, the undisputed testimony is that the Tenants took steps to repair and repaint the damaged areas. However, the Landlord advised them not to proceed and engaged a professional to do the work. Accordingly, I find the Landlord did not do what was reasonable to minimize the damage or loss when she instructed the Tenants not to repair and repaint the walls. As a result, I find that this aspect of the Landlord's Application is dismissed.

With respect to the Landlord's claim for $220.00 for top soil and seed for the garden, I find the Landlord has demonstrated an entitlement to recover this amount from the Tenants. The Tenants did not dispute the Landlord's testimony that they had a verbal agreement to maintain the yard area. Indeed, the Tenants acknowledged they had previously done so at their own expense. Although the Tenants testified dog feces had been cleaned, they did not dispute the condition of the yard as described by the Landlord. As a result, I grant the Landlord a monetary award of $220.00.

With respect to the Landlord's claim for $135.33 to rent a wheelbarrow and a pressure washer, I find the Landlord is entitled to the relief sought. The Tenants acknowledged that some sawdust and dog hair was likely remaining in the garage at the end of the tenancy. The Landlord testified, and I accept, that the odour of dog urine was particularly offensive. Accordingly, I find that cleaning was required in the areas claimed. As a result, I grant the Landlord a monetary award of $135.33.

With respect to the Landlord's claim for $189.00 for carpet cleaning, I find there is insufficient evidence before me to conclude the Landlord is entitled to recover this amount. The Landlord did not dispute the Tenants' testimony regarding having the carpets professionally cleaned and that she noted they appeared to be doing a good job. I also find it is more likely than not that the Tenants has the carpets professionally cleaned, and that it was not commercially reasonable to incur additional expense to re-clean the carpets. I also note the Landlord did not submit photographic evidence of the condition of the carpets. As a result, this aspect of the Landlord's Application is dismissed.

With respect to the Landlord's claim for $400.00 for labour related to applying top soil and grass seed, and pressure washing various areas of the yard, I find this loss flows from the Tenants' failure to maintain the lawn as agreed, and the need to pressure wash various parts of the rental property to address saw dust, dog hair, and dog urine. As a result, I find the Landlord is entitled to a monetary award of $400.00.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of $755.33, which has been calculated as follows:

Claim	**Award**
Top soil and grass seed:	$220.00
Equipment rental:	$135.33
Labour:	$400.00
TOTAL:	**$755.33**

The Tenants' Claim

With respect to the Tenants' claim for $3,000.00 for recovery of the security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. If a landlord fails to repay deposits or make a claim against them within 15 days after receipt of a tenant's forwarding address, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, I find the Tenants provided the Landlord with their forwarding address in writing via email, which was received by the Landlord on August 3, 2018. Pursuant to section 38(1) of the *Act*, the Landlord had 15 days after receipt – until August 18, 2018 – to repay the deposits or make a claim against them. The Landlord's claim was made on August 18, 2018. Therefore, I find the Tenants are entitled to recover the security deposit and the pet damage deposit, but are not entitled to receive double under section 38(6) of the Act. Therefore, I find the Tenants have demonstrated an entitlement to a monetary award of $3,000.00.

Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award of $755.33. The Tenants have demonstrated an entitlement to a monetary award of $3,000.00. As both parties have had some success, I decline to grant recovery of the filing fee to either party.

Setting of the parties' claims, and pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of $2,244.67 ($3,000.00 - $755.33).

Conclusion

The Tenants are granted a monetary order in the amount of $2,244.67. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 18, 2018

Residential Tenancy Branch